

Maryland Agricultural Land Preservation Program

RETAINED RESIDENTIAL LOT OPTIONS ON EASEMENT PROPERTIES (pre-October 2003[†])

This Fact Sheet details the eligibility you retain to request that an owner's or child's lot be released from Maryland Agricultural Land Preservation Foundation (MALPF) easement restrictions for your or your child's personal use and that a pre-existing residence be released from any easement restrictions. This discussion applies only to pre-October 2003 easements, and its specific application depends upon the language in your deed of easement.

Eligibility for the Release of Owner's and Child's Lots

[†] A pre-October 2003 easement to which the following discussion applies is an easement approved by the Maryland Board of Public Works before October 1, 2003. The language in your recorded Deed of Easement will clarify your retained residential lot options.

If your easement pre-dates October 2003:

- You, as the original owner, are eligible to apply for release of a one-acre or smaller lot for your personal residence. Irrespective of the form of ownership (multiple individuals, family entity, or non-family entity), only one owner's lot can be released, no matter how many district or easement properties you own.
- You, as the original owner, are eligible for release of a one-acre or smaller lot for residences for each of your children, providing that you have enough land for one lot per 20 acres up to a maximum of 10 lots per property, including the release of an owner's lot. Non-family entities are not eligible for children's lots.
- Eligibility to exclude owner's and child's lots is extinguished when the property transfers to a subsequent owner, whether or not all of the lots have been developed.
- If more than one acre is necessary to meet regulations adopted by the county or to meet the septic requirements, up to two acres can be released from the easement with written verification from the appropriate county agency. Under exceptional circumstances, the Foundation may release more than two acres for a family or unrestricted lot to meet unusual septic requirements with adequate documentation from the county health department.
- If your easement property was subject to a district agreement before the sale of the easement, any lot released during the period that only the district agreement was in effect will use up lot eligibility from the total number of lots possible on the property.

- The release of an owner's or child's lot from the easement requires the payback to the Foundation the amount paid to you for the easement on a pro-rated per acre basis. Thus, if you were paid \$1,500 per acre and your lot requires 1.5 acres to meet septic requirements, you will be required to repay the Foundation \$2,250.
- Release of an owner's or child's lot from the easement does not constitute a subdivision of the lot from the balance of the property. The lot may not be sold or otherwise conveyed separately from the whole property without appropriate subdivision approval from the local governing authority.
- Because owner's and child's lots are highly restricted and only available for the personal use of eligible individuals, any lot releases issued after October 1, 2004, contain a five-year restriction on the transfer of any released lot to a third party without permission of the Foundation.
- All lot release requests must be reviewed and approved by the county and the Foundation's Board of Trustees. The approval process and criteria are detailed in a separate fact sheet.

Please note that only the original owner who sold the agricultural preservation easement to the Foundation is eligible for release of owner's and child's lots. Subsequent owners of the property are not eligible for release of such lots whether the original owner had lots released or not. Any lots released from the easement cannot be further subdivided.

The Release of Pre-existing Dwellings

The following discussion applies only to pre-October 2003 easements as defined above. The language in your recorded Deed of Easement will clarify your retained residential lot options.

You or any subsequent owner may exclude a one-acre or smaller lot surrounding any dwelling that existed at the time of easement purchase.

- The release of a lot associated with such a pre-existing dwelling does not affect your eligibility for the release of owner's or child's lots.
- The recipient of the pre-existing dwelling excluded from the provisions of the easement is not restricted.
- If more than one acre is necessary to meet regulations adopted by the county or to meet the septic requirements, up to two acres can be released from the easement with written verification from the appropriate county agency. Under exceptional circumstances, the Foundation may release more than two acres for a family or unrestricted lot to meet unusual septic requirements with adequate documentation from the county health department.
- If more than one acre is necessary to meet regulations adopted by the county or to meet the septic requirements, you will be required to repay the Foundation for the acreage beyond the one acre on which the Foundation did not pay when the easement was acquired. For example, if you were paid \$1,500 per acre and your lot for the pre-existing dwelling needs a total of 1.5 acres to meet septic requirements, you will be required to repay the Foundation \$750 for the additional half-acre required for septic purposes.
- Release of a pre-existing dwelling from the easement does not constitute a subdivision of the lot from the balance of the property. The associated lot

may not be sold or otherwise conveyed separately from the whole property without appropriate subdivision approval from the local governing authority.

Estate Planning

With the exception of those eligible for and choosing the unrestricted lot option, the law specifically allows only the original landowner who sold the easement to create lots for his or her children. If the owner should die before formally and in writing requesting any lots for eligible children, the Foundation may deny any requests to release lots for these children.

As a form of insurance against such an occurrence, the landowner may formally document the intention to create a child's lot even though this transaction may not be completed until years later. The landowner may formally and in writing state the intent to create a child's lot for specifically named eligible children in a letter to the Foundation that is placed in the property file, or the landowner may include language in his or her last will and testament which clearly indicates the intention to create lots for the named children (or, preferably, may place a letter of intent in the Foundation's property file and include a statement of intent in the last will and testament).

By presenting the Foundation's letter of approval, a letter from the Foundation acknowledging receipt of this letter of intent, and/or the will, a landowner's child may complete the lot release transaction after the landowner's death. However, even if a landowner has formally documented the intention to create lots, any uncompleted lot release transactions are null and void once the property is sold or the ownership is transferred.

This fact sheet is a public document and is provided for general information only. If you have a question about a specific law, regulation, or provision of the district agreement, option contract, or deed of easement, please consult legal counsel.

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<http://www.malpf.info/facts/fact07.pdf>